IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal (Ld) No. 870 of 2004
in
Writ Petition No. 2222 of 2004

1. Board of Trustees of the
Port of Mumbai and ors. ..Appellants

vs.

Vidyadhar Pandurang Rane ..Respondent

Mr.E.P.Bharucha i/b M/s Mulla & Mulla & C.B.& C. for appellants.
Mr.Jaiprakash Sawant for respondent.

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
18th March, 2005

P.C.

1. This appeal is preferred against the judgment and order of a learned single Judge of this Court upholding the employee's right to be represented by one Jaiprakash Sawant in a domestic enquiry. The learned single Judge has rejected the appellants' contention that the said Sawant is not entitled to represent the employee because he is a legal practitioner prohibited from appearing in the enquiry by virtue of Regulation 12(8) of the Bombay Port Trust Employees' (Classification, Control and Appeal) Regulations, 1976, hereinafter for brevity's sake referred to as "the Regulations".

2. The enquiry officer objected to the appearance of Jaiprakash Sawant, admittedly a qualified Advocate, on the ground that he is a legal practitioner and consequently not entitled to represent the respondent employee. The respondent then made a representation dated 23.4.2004 contending inter alia that regulation l2(8) permits appearance of office bearer of a trade union in such an enquiry irrespective of the fact that he is a legal practitioner. The representation was referred to the Chairman and it came to be rejected. The respondent employee then preferred a writ petition which was allowed by the learned single Judge holding that regulation l2(8) entitles an employee to seek assistance of office bearer of the union to which he belongs to in the course of a domestic enquiry against such an employee and it is immaterial that such an officer bearer happens to be a legal practitioner. The learned single Judge placed reliance on the judgment of the Supreme Court in the case of Paradip Port Trust vs Their Workmen, AIR l977 SC 36.

3. We have heard the learned counsel appearing for the parties and we are inclined to agree with the view taken by the learned single Judge that the prohibition imposed against a legal practitioner

being engaged in a domestic enquiry under regulation l2(8) cannot apply to the case where officer bearer happens to be a legal practitioner. Regulation l2(8) which is relevant for our purpose reads as follows:

> "12(8) The employee may take the assistance of any other employee or, if the employee is a class III or a class IV employee, of an "office -bearer" as defined in clause (d) of section 2 of the Indian Trade Unions Act, 1926 (16 of 1926), of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority, is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits."

4. The question is whether the expression "office bearer" under the above regulation would exclude a person who happens to be a legal practitioner. The regulations speak of an office bearer to mean the one as defined under the provisions of law comprised under the Trade Unions Act, 1926. Section 2(b) of the Trade Unions Act defines the

term "office bearer" and it states that "office bearer" in the case of a trade union would include every member of its executive except an auditor. Considering the definition of the term "office bearer" under the Trade Unions Act, even an executive member, who happens to be a legal practitioner, would be an office bearer of such union. Even on plain reading of this regulation, it is clear that there is no room for doubt that the prohibition against legal practitioner being engaged in a domestic enquiry cannot apply to the case where the office bearer happens to be a legal practitioner.

5. Mr.Bharucha urged before us that Jaiprakash Sawant cannot be said to be an office bearer of the union in view of the fact that he is basically a legal practitioner and, therefore, not entitled to represent the workman. We find no merit in this contention. There is no doubt that a legal practitioner is prohibited from representing an employee in the domestic enquiry before the enquiry officer. That, however, does not mean that any person who has obtained LL.B.degree or is a practicing Advocate is debarred from appearing in the domestic enquiry even though he is office bearer of the union. We find that the object of

Regulation 12(8) is to enable the employee to be represented by a person who can effectively espouse their cause barring legal practitioners in the said proceeding. The purpose is not to disable representative who has knowledge of law or who has practiced law. The purpose is to enable the employee to appoint a representative who understands the position and who can effectively represent them in the domestic enquiry. Therefore the prohibition would arise only when a relationship of lawyer and client arises between the employee and the person engaged to represent the employee in the domestic enquiry and not when a relationship between the employee and the person appointed to assist him is that of an office bearer of the union of which the employee is a member.

6. In Paradip Port Trust’s case the Supreme Court was concerned with section 36 of the Industrial Disputes Act, l947. Section 36(l) of the Industrial Disputes Act provides that a workman, who is a party to a dispute, shall be entitled to be represented in any proceedings under the Industrial Disputes Act by three classes of officers as mentioned in the clauses (a), (b) and (c) of sub-section (l) of section 36 namely:

" (a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated:

(c) where the worker is not a member of any trade union, by any member of the executive or other office-bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

Sub-section (2) of section 36 provides an employer who is a party to a dispute shall be entitled to be represented in any proceedings under the Industrial Disputes Act by -

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the

association referred to in clause (a) is affiliated.

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

Sub-section (3) of section 36 of the Industrial Disputes Act provides that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

7. In the case of Paradip Port Trust the Supreme Court considering the provisions of section 36(4) of the Industrial Disputes Act, held that if the legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practising advocate, the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal

practitioner is an officer of an association of employers or of a federation of such association, there is nothing in section 36(4) to prevent him from appearing before the tribunal under the provisions of section 36(2) of the Industrial Disputes Act. The court summarised the legal position as follows:

> "The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workman and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in section 36(l) and section 36(2) are fulfilled by him".

> " A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office bearer of a registered union or

an officer of association of employers and no consent of the other side and leave of the Tribunal will, then, be necessary".

(emphasis supplied)

8. The decision in Paradip Port Trust's case was on the point whether the office bearer who happens to be a legal practitioner could represent the employee. The decision in Paradip Port Trust's case was in relation to the proceedings before the court or the Tribunal under sec.36 of the Industrial Disputes Act but it would not make any difference when the proceedings are before an inquiry officer. In both the cases it relates to the adjudication of a dispute between the parties. The expression "office bearer" has been specifically defined to have the same meaning as provided to the said expression under the Trade Unions Act and in terms of the definition under sec.2(b) of the Trade Unions Act, the said expression includes every member of the executive body of the union. It does not exclude any member merely because he happens to be a legal practitioner. Considering the law laid down by the Supreme Court in Paradip Port Trust's case and considering the phraseology of regulation 12(8) of

the said Act the prohibition cannot be applied to cases where the office bearer happens to be a legal practitioner. The said prohibition would operate only when the employee wants to engage a lawyer. In the result we find no merit in the appeal and the same is hereby dismissed.

The Supreme Court has observed as follows:

> "15. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay roll and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal decree will not stand in the way of the company or the corporation being represented by him. Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act. Again an office bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the Tribunal under section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in then case of an employer and in the capacity of an office bearer of the union in the case of workmen

and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.

"17. We may note here the difference in language adopted in section 36(1) and Section 36(2). While Section 36(1) refers to "any member of the executive "or" other "office bearer", Section 36(2) instead mentions only "an officer". Now, "executive" in relation to a trade union means the body of whatever name called to which the management of the affairs of the trade union is entrusted under Section 2(gg). "Office bearer" in relation to a trade union includes any member of the executive thereof but does not include an auditor Section 2(lll). So far as trade unions are concerned there is no difficulty in ascertaining a member of the executive or other office bearer and Section 36(1) will create no difficulty in practical application. But the word "officer" in Section 36(2) is not defined in the Act and

may well have been as done under section 2(30) of the Companies Act. This is bound to give rise to controversy when a particular person claims to be an officer of the association of employers. No single test nor an exhaustive test can be laid down for determining as to who is an officer in absence of a definition in the Act. When such a question arises the Tribunal, in each individual case, will have to determine on the materials produced before it whether the claim is justified. We should also observe that the officer under Section 36(2) is of the association or of the federation of associations of employers and not of the company or corporation."